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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/721,058	11/22/2000	Jeffrey W. Chen	6185-221D1XX/09807491	5421
167	7590	01/08/2004	EXAMINER	
FULBRIGHT AND JAWORSKI L L P			JIMENEZ, MARC QUEMUEL	
PATENT DOCKETING 29TH FLOOR			ART UNIT	PAPER NUMBER
865 SOUTH FIGUEROA STREET			3726	
LOS ANGELES, CA 900172576			DATE MAILED: 01/08/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/721,058	CHEN, JEFFREY W.	
<b>Examiner</b>	<b>Art Unit</b>		
Marc Jimenez	3726		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 31 October 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 17-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 17-19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 22 November 2000 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). 16 .  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to because there are no reference numerals indicating the pivot point of the protective cap. It is important that this feature be numbered because applicant has stated that it is inherent in the drawings and has added the pivot connection description in the specification. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The abstract of the disclosure is objected to because - - now patent number 6,253,440 - - should be inserted after "09/229,294" in the first line of the specification. Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 17-19** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in

the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 17 recites “**an** elastomeric seal between said flange and said upper open end of said inner vessel and between said flange and said valve cup”. This limitation implies that there is only one elastomeric seal by the recitation of “**an** elastomeric seal”. It is unclear how one elastomeric seal can be both between the flange and the upper open end of the inner vessel and also between the flange and the valve cup at the same time. Fig. 1 shows that the elastomeric seal **30** is between the flange **28** and the inner vessel cap **18**. The elastomeric seal **30** is **not** also located between the flange **28** and the valve cup **22**. Applicant states that in the specification at page 5, line 7, “A similar elastomeric material is coated on the exterior surface of the valve cup **22** and thus also provides a seal between the valve cup **22** and beverage can **14**”, however, the claims do not specifically point out having a second elastomeric seal. Applicant appears to be defining “**an** elastomeric seal” in the claims as being two different types of seals, one being an elastomeric washer **30** and the other an elastomeric coating, which renders the scope of the claims unclear.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 17-19** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites “**an** elastomeric seal between said flange and said upper open end of said inner vessel and between said flange and said valve cup”. This limitation implies that there is only one elastomeric seal by the recitation of “**an** elastomeric seal”. It is unclear how one elastomeric seal can be both between the flange and the upper open end of the inner vessel and also between the flange and the valve cup at the same time. Fig. 1 shows that the elastomeric seal 30 is between the flange 28 and the inner vessel cap 18. The elastomeric seal 30 is not also located between the flange 28 and the valve cup 22. Applicant states that in the specification at page 5, line 7, “A similar elastomeric material is **coated** on the exterior surface of the valve cup 22 and thus also provides a seal between the valve cup 22 and beverage can 14”, however, the claims do not specifically point out having a second elastomeric seal. Applicant appears to be defining “an elastomeric seal” in the claims as being two different types of seals, one being an elastomeric washer 30 and the other an elastomeric coating, which renders the scope of the claims unclear.

#### *Claim Rejections - 35 USC § 103*

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 17-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner (3,417,573) in view of Garrett (5,692,381) and Anthony (5,394,703).

Warner teaches a container having a heat exchange unit **2** therein for cooling a beverage **B** comprising: an outer vessel **4** for containing the beverage **B** and having a top **20** and a bottom **5**, the bottom **5** defining an opening (see opening in fig. 3-6) therethrough and a flange (See the end of lead line **7**. It is noted that the flange is defined by the material of **1**) having first and second sides formed from material of the bottom **5** surrounding the opening and extending away from the bottom and into the container (the section of the flange at the end of lead line **7** is located away from the bottom **5** and into the container **4** because the container **4** surrounds the flange), a valve cup **10** carrying a valve **19**, the valve cup **10** having a wall extending through the opening in the bottom, said wall disposed adjacent the flange first side (The valve cup **10** has a wall that contacts the surface of **2** in fig. 6 and 7. The valve cup wall is adjacent to the flange first side because it is close the flange first side. Even though there is material from **2** between the flange and the valve cup **10**, it is still "adjacent" as much as the valve cup **22** of applicant is adjacent to **28** because there is a material between **22** and **28** as applicant describes. Therefore, "adjacent" does not mean that the elements have to be contacting each other.), an inner unitary vessel **2** having an upper open end (fig. 3-6) and a closed bottom (see fig. 1), the upper open end of the inner vessel **2** disposed adjacent the flange second side (the material of the inner vessel **2** wraps around the flange to the right of lead line **7**), an elastomeric seal **7** between the flange and the upper open end of the inner vessel **2** and **11** defines a "gasketing material" (col. 2, line 17) between the flange and the valve cup **10**, means for non-removably affixing the inner vessel **2** to the flange including crimping those adjacent portions **12** of the valve cup **11**.

Warner teaches the invention cited with the exception of having an absorbent material substantially filling the inner vessel, and carbon dioxide gas under pressure absorbed onto the

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absorbent material, whereby when the valve is activated, the carbon dioxide gas is desorbed from the absorbent material and cools the beverage. Warner also do not specifically use an elastomeric as the seal.

Garrett teaches an absorbent material **12** substantially filling the inner vessel **14**, and carbon dioxide gas (col. 3, lines 1-3) under pressure absorbed onto the absorbent material, whereby when the valve is activated, the carbon dioxide gas is desorbed from the absorbent material and cools the beverage (col. 2, lines 1-5, see also the description of Garrett in applicant's specification at page 4, lines 18-21).

Anthony teaches that it is known to use an elastomeric material as a seal in containers (col. 3, lines 25-26).

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Warner with an absorbent material substantially filling the inner vessel, and carbon dioxide gas under pressure absorbed onto the absorbent material, whereby when the valve is activated, the carbon dioxide gas is desorbed from the absorbent material and cools the beverage, in light of the teachings of Garrett, in order to quickly cool the beverage in a controlled manner as suggested by Garrett at col. 1, lines 34-35. Furthermore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Warner/Garrett with an elastomeric material as the seal, in light of the teachings of Anthony, in order to provide a seal material that is flexible and provides an air tight and watertight seal.

Regarding claim 18, Warner teaches that the cap **16** is pivotally secured to the valve cup **15** for protecting the valve **19** and having a member pivotally affixed to the cap **15** and having a

downwardly movable surface **18** for contacting and activating the valve **19**. It is noted that the cap **16** is “pivotally affixed” because it rotates with respect to member **15**. The cap **16** “pivots” as a linkage connection, similar to how a door pivots with respect to the door hinge.

Regarding claim 19, Warner teaches that the cap **16** is screwed in place rather than snapped in place. However, at the time of the invention, it would have been an obvious matter of design choice to a person of ordinary skill in the art, to have used a snap fit connection because applicant has not disclosed that a snap fit connection provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant’s invention to perform equally well with either a screwed on connection taught by Warner or the claimed snapped fit connection because either connections perform the same function of connecting the cap to the valve cup equally well.

### ***Double Patenting***

9. **Claims 17-19** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,487,766 in view of Warner and Anthony.

‘766 teaches a container (col. 9, lines 10-11) having heat exchange unit (col. 9, line 11) therein for cooling a beverage (col. 9, line 10) comprising: an outer unitary vessel (col. 9, line 13, “container”) for containing the beverage and having a top and a bottom (col. 9, lines 13-14), the bottom defining an opening therethrough (col. 9, line 16) and a flange (col. 9, lines 18-19) having first and second sides formed from material of the bottom surround the opening and extending away from the bottom (col. 10, lines 55-57), a valve (col. 9, line 28), an inner unitary

vessel (col. 9, line 21, "heat exchange unit") having an upper open end and a closed bottom (col. 9, line 21), the upper open end of the inner vessel disposed adjacent the flange second side (col. 12, line s 21-22), a seal (col. 10, line 3) between the flange and the upper open end of inner vessel, means for non-removably affixing the inner vessel to the flange including crimping those adjacent portions (col. 9, lines 35-39) of the valve, heat exchange unit, and flange, an absorbent material (col. 10, lines 22-23) substantially filling the inner vessel, and carbon dioxide gas under pressure (col. 10, lines 21-22) absorbed onto the absorbent material, whereby when the valve is activated, the carbon dioxide gas is desorbed from the absorbent material and cools the beverage.

'766 teaches the invention cited with the exception of having a valve cup, applying a seal between the flange and valve cup, and using elastomeric material as the seal.

Warner teaches a valve cup **10** and a seal **11** between the flange and valve cup.

Anthony teaches that it is known to use elastomeric material as a seal (col. 3, lines 25-26).

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of '766 with a valve cup and a seal between the flange and valve cup, in light of the teachings of Warner, in order to protect the valve and in order to provide an air and water tight seal in the container.

Furthermore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of '766/Warner with an elastomeric seal, in light of the teachings of Anthony, in order to provide a material that is flexible and provides and air/water tight seal.

Regarding claim 18, Warner teaches that the cap **16** is pivotally secured to the valve cup **15** for protecting the valve **19** and having a member pivotally affixed to the cap **15** and having a

downwardly movable surface **18** for contacting and activating the valve **19**. It is noted that the cap **16** is “pivotally affixed” because it rotates with respect to member **15**. The cap **16** “pivots” similar to a linkage connection like how a door pivots with respect to the door hinge.

Regarding claim 19, Warner teaches that the cap **16** is screwed in place rather than snapped in place. However, at the time of the invention, it would have been an obvious matter of design choice to a person of ordinary skill in the art, to have used a snap fit connection because applicant has not disclosed that a snap fit connection provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected applicant’s invention to perform equally well with either a screwed on connection taught by Warner or the claimed snapped fit connection because either connections perform the same function of connecting the cap to the valve cup equally well.

#### *Response to Arguments*

10. Applicant's arguments with respect to claims 17-19 have been considered but are moot in view of the new ground(s) of rejection.
11. In response to applicant's argument that in the specification at page 5, line 7, “A similar elastomeric material is coated on the exterior surface of the valve cup **22** and thus also provides a seal between the valve cup **22** and beverage can **14**”, however, the claims do not specifically point out having a second elastomeric seal. Applicant appears to be defining “an elastomeric seal” in the claims as being two different types of seals, one being an elastomeric washer **30** and the other an elastomeric coating, which renders the scope of the claims unclear. Claim 17 recites “**an** elastomeric seal between said flange and said upper open end of said inner vessel and

between said flange and said valve cup". This limitation implies that there is only one elastomeric seal by the recitation of "**a**n elastomeric seal". It is unclear how one elastomeric seal can be both between the flange and the upper open end of the inner vessel and also between the flange and the valve cup at the same time. Fig. 1 shows that the elastomeric seal **30** is between the flange **28** and the inner vessel cap **18**. The elastomeric seal **30** is **not** also located between the flange **28** and the valve cup **22**.

### *Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Interviews After Final***

13. Applicant note that an interview after a final rejection will not be granted unless the intended purpose and content of the interview is presented briefly, in writing (the agenda of the interview must be in writing) to clarify issues for appeal requiring only nominal further consideration. Interviews merely to restate arguments of record or to discuss new limitations will be denied. See MPEP 714.13 and 713.09.

***Contact Information***

14. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, or fax (703) 872-9301 or by email to [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Jimenez whose telephone number is **703-306-5965**. The examiner can normally be reached on **Monday-Friday, between 5:30 am- 2:00 pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, Peter Vo can be reached on 703-308-1789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

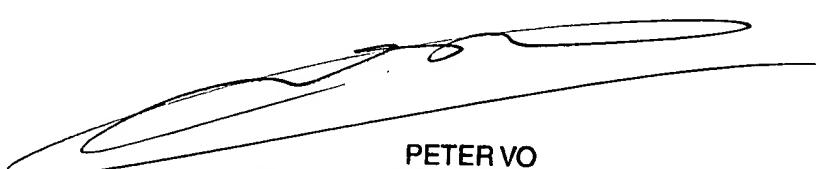
Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 308-6789 or (888) 786-0101
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MJ   
January 6, 2004

  
PETER VO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700